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Court of Justice of the Federal District and Territories.
Court of Justice of the Federal District and Territories

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Superior Court of Justice

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SUPERIOR
TRIBUNAL DE JUSTIÇA

Official Letter No. 01681/2024-CPPR

COMMUNICATES DECISION

Oh (Oh)

COURT OF LAW OF THE 3RD COURT OF EXECUTION OF EXTRAJUDICIAL TITLES AND ARBITRATION CONFLICTS OF BRASÍLIA - DF

CONFLICT OF JURISDICTION No. 206560/DF (2024/0252223-3)

Nº Único:	0252223-49.2024.3.00.0000
Rapporteur:	Rapporteur
Originating	07136774720248070001, 08038906620228100040, 7136774720248070001, 8038906620228100040

Court: Petitioner: Court of Law of the 3rd Court of Execution of Extrajudicial Titles and Arbitration Disputes of Brasília - DF

RAISED BY: COURT OF LAW OF THE 5TH CIVIL COURT OF IMPERATRIZ - MA
INTERESTED PARTY: AUTOTRAC COMÉRCIO E TELECOMUNICAÇÕES S/A
INTERESTED PARTY: MANOEL CARLOS PEREIRA LOPES

The Superior Court of Justice announces comunica:

Attached decision.

Access to the case file at the Superior Court of Justice (STJ) and submission of information must be done via the following link: https://cpe.web.stj.jus.br/#/chave?k=17CF4B4A7BEBD068A335
(valid until 10/18/2024 at 9:53 PM)

ACCESS HERE

Brasilia, date recorded in the system.

Respectfully,

ANGELA MARIA DE QUEIROZ DIAS
Coordinator of Private Law Case Processing

DÚVIDAS?
(61)3319-8000

Electronic document VDA42921475 electronically signed in accordance with Article 1, §2, item III of Law 11.419/2006. Signatory: JUSTICE SYSTEM - AUTOMATIC SERVICES, Signed on: 08/19/2024 21:53:02. Document Control Code : 6f9cffef-01dd-49ca-8833-16ddec077c70 .
Access Key: https://cpe.web.stj.jus.br/#/chave?k=17CF4B4A7BEBD068A335, valid until 10/18/2024 at 21:53:00.

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SUPERIOR TRIBUNAL DE JUSTIÇA

CONFLICT OF JURISDICTION No. 206560 - DF (2024/0252223-3)

REPORTER	**MINISTER ANTONIO CARLOS FERREIRA**
RAISING	COURT OF LAW OF THE 3RD COURT OF EXECUTION OF TITLES Extrajudicial and Arbitration Disputes in Brasília - DF
ARISES	COURT OF LAW OF THE 5TH CIVIL COURT OF IMPERATRIZ - MA
INTEREST.	AUTOTRAC COMMERCE AND TELECOMMUNICATIONS S/A
ATTORNEY	: EDEMILSON KOJI MOTODA - SP231747
INTEREST.	MANOEL CARLOS PEREIRA LOPES
ATTORNEY	: NO REPRESENTATION IN THE CASE FILE - SE000000M

DECISION

This is a negative conflict of jurisdiction in which the 3rd Court of Execution of Extrajudicial Titles and Arbitration Conflicts of Brasília - DF is the initiating party and the 5th Civil Court of Imperatriz – MA is the responding party in the case of an action for execution of an extrajudicial title filed by AUTOTRAC COMÉRCIO E TELECOMUNICAÇÕES SA against MANOEL CARLOS PEREIRA LOPES.

The court, acting on its own initiative, declined jurisdiction in favor of the Federal District Court, arguing, in summary, that there is a forum selection clause determining the jurisdiction of that court.

The petitioner, in turn, considered that (e-STJ p. 96):

> That learned Judge based his decision on the fact that the parties had included in the enforceable contract a clause electing the forum, designating this Judicial District of Brasília as the competent jurisdiction.
>
> However, the decision, made ex officio, arose after the defendant was summoned and measures were ordered, such as the seizure of assets via Sisbajud (IDs 192657729 and 192657718).
>
> Since this is a matter of relative jurisdiction, that learned Court should have recognized outright the abusiveness of filing the action in that Court, which did not occur. Furthermore, since the defendant did not allege compliance with the aforementioned choice of forum, jurisdiction to judge the case was extended to that Court.
>
> In light of the foregoing, this Court considers itself incompetent to process and judge the present case, which is why I raise a conflict of jurisdiction.

Opinion of the Federal Public Prosecutor's Office in the following terms (e-STJ p. 102):

> Negative conflict of jurisdiction. Enforcement of a judgment.

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> EXTRAJUDICIAL. TERRITORIAL JURISDICTION. RELATIVE NATURE.
> It is not possible to declare it ex officio. Summary 33/STJ.
> PRECEDENTS.
>
> Opinion in favor of acknowledging the conflict and declaring the jurisdiction of the Honorable Judge.
> Court of Law of the 5th Civil Court of Imperatriz - MA.

This is the report.

Decision.

In the present case, the issue under discussion is who has jurisdiction to hear the action.
enforcement of an extrajudicial instrument initiated in disregard of the chosen forum.

The court, acting on its own initiative, declined jurisdiction based on an alleged contractual clause regarding the choice of forum that was not observed by the plaintiff, who filed the enforcement action in the district where the defendant resides.

According to the jurisprudence of this Superior Court, the forum selection clause establishes relative jurisdiction, *in verbis:*

> CIVIL PROCEDURE. MOTION FOR RECONSIDERATION IN A NEGATIVE CONFLICT OF LAW.
> JURISDICTION. COLLECTION ACTION. COMMERCIAL REPRESENTATION CONTRACT.
> ARTICLE 39 OF LAW NO. 4,886/65.
> RELATIVE JURISDICTION. CHOICE OF FORUM CLAUSE.
> VALIDITY. PRECEDENT FROM THE SECOND SECTION OF THE STJ: ERESP 579.324/SC,
> MIN. NANCY ANDRIGHI, DJ OF 02/04/2008.
> The impediment of Article 117 of the CPC does not apply to this case.
> The known conflict is resolved by declaring the 1st Civil Court of the Santo Amaro Regional
> Forum - SP competent. The appealed decision is upheld. The interlocutory appeal is denied.
>
> (AgRg in CC 128.789/SP, Rapporteur Minister PAULO DE TARSO SANSEVERINO, SECOND SECTION, decided on 06/11/2014, DJe 06/17/2014.)

Therefore, the Court cannot declare its own jurisdiction without the defendant's request, according to Precedent No. 33 of the Superior Court of Justice: "relative incompetence cannot be declared ex officio" (Precedent No. 33, SPECIAL COURT, decided on 10/24/1991, Official Gazette 10/29/1991, p. 15,312).

In this regard, the jurisprudence of this Superior Court:

> INTERNAL APPEAL IN A CONFLICT OF JURISDICTION. INVENTORY.
> Territorial jurisdiction. Relative nature. Precedent 33/STJ.
>
> [...]
>
> 2. Relative incompetence cannot be declared ex officio, according to Precedent 33 of the Superior Court of Justice (STJ).
>
> 3. Internal appeal denied.
>
> (AgInt in CC No. 191.197/SP, Rapporteur Minister NANCY ANDRIGHI, SECOND SECTION, decided on 04/18/2023, DJe of 04/25/2023.)

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In light of the foregoing, I hereby acknowledge the present negative conflict of jurisdiction and declare the 5th Civil Court of Imperatriz – MA to be the competent court.

Publish and notify.

Brasilia, August 19, 2024.

Minister Antonio Carlos Ferreira

Rapporteur

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